

JANUARY 9, 2008MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS**

08 C 193

ELAINE L. CHAO, Secretary of Labor, :
United States Department of Labor, :
Petitioner, :
v. : CIVIL ACTION
: File No.
JAMES LOUGHREY, CUSTODIAN OF :
RECORDS AND TRUSTEE OF LOMA :
SERVICES, INC. SIMPLE IRA PLAN, :
Respondent. :

**JUDGE GUZMAN
MAGISTRATE JUDGE KEYS**

**PETITION TO COMPEL RESPONDENT TO
COMPLY WITH SUBPOENA DUCES TECUM**

Petitioner, Elaine L. Chao, Secretary of Labor (the “Secretary”), United States Department of Labor, brings this action to compel respondent, James Loughrey, Custodian of Records and Trustee of Loma Services, Inc. Simple IRA Plan (“Respondent”) to comply with the subpoena duces tecum issued and directed to it by the Regional Director, Chicago Regional Office, Employee Benefits Security Administration, United States Department of Labor, in aid of an investigation pursuant to the Employee Retirement Income and Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (hereinafter “ERISA”).

1. Jurisdiction to issue the order prayed for herein is conferred upon this court by ERISA § 504(c), 29 U.S.C. § 1134(c), and by §§ 9 and 10 of the Federal Trade Commission Act (15 U.S.C. §§ 49, 50).
2. By virtue of ERISA § 504(a)(1), 29 U.S.C. § 1134(a)(1), the Secretary has the power, in order to determine whether any person has violated or is about to violate the provisions

of Title I of ERISA or any regulation or order issued thereunder, to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under Title I of ERISA. Pursuant to ERISA § 504(c), 29 U.S.C. § 1134(c), for purposes of any investigation provided for in Title I of ERISA, the provisions of §§ 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act (15 U.S.C. §§ 49, 50) are made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, duties of the Secretary or any officers designated by her.

3. Respondent is the Custodian of Records and Trustee of the Loma Services, Inc. SIMPLE IRA Plan (the "Plan") in the city of Palos Park, IL, within the jurisdiction of this court.

4. Pursuant to the power vested in him as the Regional Director, Chicago Regional Office of the Employee Benefits Security Administration, United States Department of Labor, Steven L. Haugen signed and issued a subpoena duces tecum relating to the investigation of the Plan (the "Subpoena"). The Subpoena required Respondent to appear before Aniela B. Janachowski, Investigator, Employee Benefits Security Administration, United States Department of Labor, 200 West Adams Street, Suite 1600, Chicago, IL at 10:00 a.m. on the 17th day of April, 2007, and then and there to testify and produce designated books, records, and documents concerning matters within the scope of an investigation conducted pursuant to ERISA § 504(a)(1), 29 U.S.C. § 1134(a)(1). A duplicate of said Subpoena has been marked Exhibit A, is attached hereto, and made a part hereof.

5. On April 12, 2007, the Subpoena, referred to in paragraph 4, was duly served on

Respondent by sending an original copy to Respondent James Loughrey, the Custodian of Records and Trustee of the Plan. A duplicate copy of the cover letter has been marked Exhibit B, is attached hereto, and made a part hereof.

6. Respondent's failure and refusal to appear, testify, and produce specified books, records, and documents, as required by the aforesaid Subpoena, has impeded and continues to impede a lawful investigation under the provisions of ERISA § 504(a)(1), 29 U.S.C. § 1134(a).

WHEREFORE, petitioner prays for an order requiring respondent to appear before this court, at least 45 days from the date of filing this petition, on a day certain, to show cause, if any there be, why it should not appear before the Secretary's designated representative, at such time and place as the court may set, then and there to give testimony and produce designated books, records, and documents, as required by the aforesaid Subpoena; and that petitioner have such other and further relief as may be necessary and appropriate.

Respectfully submitted,

GREGORY F. JACOB
Solicitor of Labor

JOAN E. GESTRIN
Regional Solicitor

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s/ Rafael Alvarez
RAFAEL ALVAREZ
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Attorneys for Elaine L. Chao,
Secretary of Labor, United States
Department of Labor,
Petitioner

CERTIFICATE OF SERVICE

I certify that one copy of each of the foregoing *Petition to Compel Respondent to Comply with Subpoena Duces Tecum, Declaration of Aniela Janachowski*, and proposed *Order to Show Cause* have been served this 9th day of January, 2008, by certified mail, return-receipt requested to the following individual:

James Loughrey
8402 S. Hillside Dr.
Palos Park, IL 60464

P.O. ADDRESS:

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s/ Rafael Alvarez
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One of the Attorneys for Elaine L. Chao,
Secretary of Labor, United States
Department of Labor, Petitioner